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United States District Court
Eastern District of California

Mario Hatri Wooten,
Plaintiff, No. Civ. S 02-2410 DFL PAN P
vs. Findings and Recommendations
Sacramento Police Department
et al.,
Defendants.

-oOo-

Plaintiff, a state prisoner without counsel, seeks to
commence a civil rights action pursuant to 42 U.S.C. § 1983. He
has submitted an affidavit requesting leave to proceed in forma
pauperis pursuant to 28 U.S.C. § 1915(a)(1). This proceeding was
referred to this court by Local Rule 72-302 pursuant to 28 U.S.C.
§ 636(b)(1).

The in forma pauperis statute permits federal district
courts to,
authorize the commencement, prosecution or defense of

1 any suit, action or proceeding, civil or criminal . . .
2 without prepayment of fees or security therefor, by a
3 person who submits an affidavit that includes a
4 statement of all assets such prisoner possesses that
5 the person is unable to pay such fees or give security
therefor. Such affidavit shall state the nature of the
action . . . and affiant's belief that the person is
entitled to redress.

6 28 U.S.C. § 1915(a)(1). A court may deny leave to proceed in
7 forma pauperis if it appears from the face of the proposed
8 complaint that the action is frivolous or without merit. Minetti
9 v. Port of Seattle, 152 F.3d 1113 (9th Cir. 1998). A claim is
10 frivolous or without merit if there is no legal theory upon which
11 the plaintiff could prevail. Neitzke v. Williams, 490 U.S. 319,
12 329 (1989) (federal court may dismiss sua sponte "claims of
13 infringement of a legal interest which clearly does not exist).
14 Plaintiff seeks to proceed under 42 U.S.C. § 1983 and so he must
15 allege an individual deprived him of a right secured to him by
16 the Constitution or laws of the United States while acting under
17 color of state law. West v. Atkins, 487 U.S. 42, 48-49 (1988).

18 Plaintiff alleges police seized his cell phone and case
19 during an arrest and have not returned them. Plaintiff does not
20 challenge the legality of the stop or ensuing search during which
21 the phone was seized. Plaintiff seeks the return of his phone
22 and case and damages for mental anguish resulting from the
23 "theft."

24 A state employee's unauthorized intentional deprivation of
25 property does not constitute a violation of the procedural
26 requirements of the Due Process Clause of the Fourteenth

1 Amendment if a meaningful postdeprivation remedy for the loss is
2 available. Hudson v. Palmer, 468 U.S. 517, 533 (1984); see also
3 Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir.1994) ("[N]egligent
4 or intentional deprivation of a prisoner's property fails to
5 state a claim under section 1983 if the state has an adequate
6 post deprivation remedy."). Plaintiff has an adequate post-
7 deprivation remedy in the state courts. See Minsky v. City of
8 Los Angeles, 113 Cal.Rptr. 102, 109 (Cal. 1974) ("[T]he
9 government in effect occupies the position of a bailee when it
10 seizes from an arrestee property that is not shown to be
11 contraband.").

12 The allegations implicate no federal right and so plaintiff
13 fails to claim infringement of an interest cognizable under
14 § 1983.

15 Accordingly, plaintiff's application for leave to proceed in
16 forma pauperis should be denied and this case should be closed.

17 These findings and recommendations are submitted to the
18 United States District Judge assigned to this case. Written
19 objections may be filed within 20 days of service of these
20 findings and recommendations. The document should be captioned
21 "Objections to Magistrate Judge's Findings and Recommendations."
22 The district judge may accept, reject, or modify these findings
23 and recommendations in whole or in part.

24 Dated: June 2, 2005.

25 /s/ Peter A. Nowinski
26 PETER A. NOWINSKI
Magistrate Judge